**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING  
REJECTION OVER A PRIOR PATENT**

Docket Number (Optional)

300622003110

In re Application of: Bryan JULIEN et al.

Application No.: 09/724,876

Filed: November 28, 2000

For: RECOMBINANT METHODS AND MATERIALS FOR PRODUCING EPOTHILONE AND  
EPOTHILONE DERIVATIVES

The owner\*, Kosan Biosciences, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,303,342. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record.

  
Signature

May 18, 2004  
Date

Randolph Ted Apple - 36,429

Typed or printed name

(650) 813-5933

Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

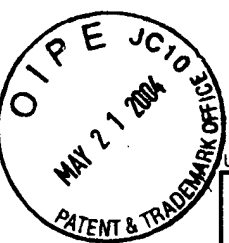
\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).  
Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

05/24/2004 MBERHE 00000011 031952 09724876

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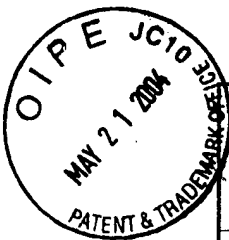
PTO/SB/21 (08-03)  
Approved for use through 07/31/2006. OMB 0651-0031  
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE  
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

|   |                      |                        |              |
|---|----------------------|------------------------|--------------|
| <b>TRANSMITTAL FORM</b><br><br>(to be used for all correspondence after initial filing) | Application Number   | 09/724,876             |              |
|   | Filing Date          | November 28, 2000      |              |
|   | First Named Inventor | Bryan JULIEN           |              |
|   | Art Unit             | 1652                   |              |
|   | Examiner Name        | N. Nashed              |              |
| Total Number of Pages in This Submission  | 4                    | Attorney Docket Number | 300622003110 |

| ENCLOSURES (Check all that apply)  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form + duplicate for fee processing (2 pages)<br><br><input type="checkbox"/> Fee Attached<br><br><input type="checkbox"/> Amendment/Reply<br><br><input type="checkbox"/> After Final<br><br><input type="checkbox"/> Affidavits/declaration(s)<br><br><input type="checkbox"/> Extension of Time Request<br><br><input type="checkbox"/> Express Abandonment Request<br><br><input type="checkbox"/> Information Disclosure Statement<br><br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><br><input type="checkbox"/> Response to Missing Parts/ Incomplete Application<br><br><input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><br><input type="checkbox"/> Licensing-related Papers<br><br><input type="checkbox"/> Petition<br><br><input type="checkbox"/> Petition to Convert to a Provisional Application<br><br><input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address<br><br><input checked="" type="checkbox"/> Terminal Disclaimer (1 page)<br><br><input type="checkbox"/> Request for Refund<br><br><input type="checkbox"/> CD, Number of CD(s) _____ | <input type="checkbox"/> After Allowance Communication to Group<br><br><input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences<br><br><input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)<br><br><input type="checkbox"/> Proprietary Information<br><br><input type="checkbox"/> Status Letter<br><br><input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):<br>Return Postcard |
| <div>Remarks</div>   |  |  |

| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT |   |
|--|---|
| Firm or Individual name                    | MORRISON & FOERSTER LLP (Customer No. 25226)<br>Randolph Ted Apple - 36,429 |
| Signature                                  |   |
| Date                                       | May 18, 2004  |

|  |                                |
|--|--------------------------------|
| I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below. |                                |
| Dated: May 18, 2004  | Signature:  (Tia B. Zimmerman) |



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# FEE TRANSMITTAL for FY 2004

Effective 10/01/2003, Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 55.00

**Complete if Known**

|                      |                   |
|----------------------|-------------------|
| Application Number   | 09/724,876        |
| Filing Date          | November 28, 2000 |
| First Named Inventor | Bryan JULIEN      |
| Examiner Name        | N. Nashed         |
| Art Unit             | 1652              |
| Attorney Docket No.  | 300622003110      |

**METHOD OF PAYMENT (check all that apply)**☐ Check ☐ Credit Card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:

Deposit Account Number

03-1952

Deposit Account Name

Morrison &amp; Foerster LLP

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION (continued)****3. ADDITIONAL FEES**

| Large Entity        |          | Small Entity |                      | Fee Description  | Fee Paid |
|---------------------|----------|--------------|----------------------|--|----------|
| Fee Code            | Fee (\$) | Fee Code     | Fee (\$)             |  |          |
| 1051                | 130      | 2051         | 65                   | Surcharge - late filing fee or oath  |          |
| 1052                | 50       | 2052         | 25                   | Surcharge - late provisional filing fee or cover sheet.                    |          |
| 1053                | 130      | 1053         | 130                  | Non-English specification  |          |
| 1812                | 2,520    | 1812         | 2,520                | For filing a request for <i>ex parte</i> reexamination                     |          |
| 1804                | 920*     | 1804         | 920*                 | Requesting publication of SIR prior to Examiner action                     |          |
| 1805                | 1,840*   | 1805         | 1,840*               | Requesting publication of SIR after Examiner action                        |          |
| 1251                | 110      | 2251         | 55                   | Extension for reply within first month                                     |          |
| 1252                | 420      | 2252         | 210                  | Extension for reply within second month                                    |          |
| 1253                | 950      | 2253         | 475                  | Extension for reply within third month                                     |          |
| 1254                | 1,480    | 2254         | 740                  | Extension for reply within fourth month                                    |          |
| 1255                | 2,010    | 2255         | 1,005                | Extension for reply within fifth month                                     |          |
| 1401                | 330      | 2401         | 165                  | Notice of Appeal   |          |
| 1402                | 330      | 2402         | 165                  | Filing a brief in support of an appeal                                     |          |
| 1403                | 290      | 2403         | 145                  | Request for oral hearing   |          |
| 1451                | 1,510    | 1451         | 1,510                | Petition to institute a public use proceeding                              |          |
| 1452                | 110      | 2452         | 55                   | Petition to revive - unavoidable   |          |
| 1453                | 1,330    | 2453         | 665                  | Petition to revive - unintentional   |          |
| 1501                | 1,330    | 2501         | 665                  | Utility issue fee (or reissue)   |          |
| 1502                | 480      | 2502         | 240                  | Design issue fee   |          |
| 1503                | 640      | 2503         | 320                  | Plant issue fee  |          |
| 1460                | 130      | 1460         | 130                  | Petitions to the Commissioner  |          |
| 1807                | 50       | 1807         | 50                   | Processing fee under 37 CFR 1.17(q)  |          |
| 1806                | 180      | 1806         | 180                  | Submission of Information Disclosure Stmt                                  |          |
| 8021                | 40       | 8021         | 40                   | Recording each patent assignment per property (times number of properties) |          |
| 1809                | 770      | 2809         | 385                  | Filing a submission after final rejection (37 CFR 1.129(a))                |          |
| 1810                | 770      | 2810         | 385                  | For each additional invention to be examined (37 CFR 1.129(b))             |          |
| 1801                | 770      | 2801         | 385                  | Request for Continued Examination (RCE)                                    |          |
| 1802                | 900      | 1802         | 900                  | Request for expedited examination of a design application                  |          |
| Other fee (specify) |          | 2814         | Statutory Disclaimer |  | 55.00    |

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 55.00

**FEE CALCULATION****1. BASIC FILING FEE**

| Large Entity |          | Small Entity |          | Fee Description        | Fee Paid |
|--------------|----------|--------------|----------|------------------------|----------|
| Fee Code     | Fee (\$) | Fee Code     | Fee (\$) |                        |          |
| 1001         | 770      | 2001         | 385      | Utility filing fee     |          |
| 1002         | 340      | 2002         | 170      | Design filing fee      |          |
| 1003         | 530      | 2003         | 265      | Plant filing fee       |          |
| 1004         | 770      | 2004         | 385      | Reissue filing fee     |          |
| 1005         | 160      | 2005         | 80       | Provisional filing fee |          |

SUBTOTAL (1) (\$) 0.00

**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE**

| Total Claims       |       | Extra Claims |   | Fee from below |   | Fee Paid |
|--------------------|-------|--------------|---|----------------|---|----------|
|                    |       |              |   |                |   |          |
| 13                 | -20 = | 0            | x | 9.00           | = | 0.00     |
| 1                  | -3 =  | 0            | x | 43.00          | = | 0.00     |
| Multiple Dependent |       |              |   | 145.00         | = | 0.00     |

| Large Entity |          | Small Entity |          | Fee Description  | Fee Paid |
|--------------|----------|--------------|----------|--|----------|
| Fee Code     | Fee (\$) | Fee Code     | Fee (\$) |  |          |
| 1202         | 18       | 2202         | 9        | Claims in excess of 20                                     |          |
| 1201         | 86       | 2201         | 43       | Independent claims in excess of 3                          |          |
| 1203         | 290      | 2203         | 145      | Multiple dependent claim, if not paid                      |          |
| 1204         | 86       | 2204         | 43       | ** Reissue independent claims over original patent         |          |
| 1205         | 18       | 2205         | 9        | ** Reissue claims in excess of 20 and over original patent |          |

SUBTOTAL (2) (\$) 0.00

\*\*or number previously paid, if greater; For Reissues, see above

**SUBMITTED BY**

(Complete (if applicable))

|                   |                    |                                   |              |           |                |
|-------------------|--------------------|-----------------------------------|--------------|-----------|----------------|
| Name (Print/Type) | Randolph Ted Apple | Registration No. (Attorney/Agent) | 36,429       | Telephone | (650) 813-5933 |
| Signature         |                    | Date                              | May 18, 2004 |           |                |